



**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The employer testified that the claimant became frustrated in the disciplinary hearing and left the premises, which the employer testified was corroborated in the Fact-finding Interview. The claimant denied that she quit, arguing that the employer directed her to leave since she was having such a hard time.

The employer failed to provide any firsthand witness to refute the claimant's testimony. In addition, the Fact-finding Interview notes were not made a part of the record. Thus, I would attribute more weight to the claimant's version of events. Any reasonable person would assume that he or she was being terminated. Given this record, I would conclude that the claimant was discharged and the employer failed to satisfy their burden of proving misconduct. Benefits should be allowed provided the claimant is otherwise eligible.

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John A. Peno

AMG/ss

The employer submitted a written argument to the Employment Appeal Board. The Employment Appeal Board reviewed the argument. A portion of the argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the argument and additional evidence (documents) were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester

AMG/ss